

1 in his plea agreement, Mr. Vargas is now precluded from challenging that sentence pursuant to 28
2 U.S.C. § 2255. *See, United States v. Abarca*, 985 F.2d 1012, 1014 (9th Cir. 1993) (holding that
3 a knowing and voluntary waiver of a statutory right is enforceable).

4 Moreover, even if Mr. Vargas had not expressly waived his right to appeal or collaterally
5 attack his sentence, his petition would still fail. Mr. Vargas prays for relief because he has a
6 family in Tijuana, Mexico who needs him. While this is all too common and unfortunate, the
7 Court can not grant any relief unless "the movant has made specific factual allegations that, if
8 true, state a claim on which relief could be granted." *United States v. Leonti*, 326 F.3d 1111,
9 1116 (9th Cir. 2003), citing *United States v. Schaflander*, 743 F.2d 714, 717 (9th Cir. 1984).
10 That his family needs him and his support in not such a claim. Accordingly,

11 **IT IS ORDERED** that Mr. Vargas's Motion to Modify Sentence is **DENIED**.

12 **IT IS SO ORDERED.**

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15 4-2-09
16 date

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GORDON THOMPSON, JR.
United States District Judge

cc: AUSA Bruce Castetter

Petitioner